

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.7390                      Emergency Action: New Section
- 4) Statutory Authority: 35 ILCS 5/704A(i)
- 5) Effective Date of Emergency Rule:
- 6) If this Emergency Rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This rulemaking will not expire prior to the conclusion of the 150 days.
- 7) Date filed with the Index Department:
- 8) A copy of the emergency rulemaking, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Public Act 101-00001 created a new minimum wage credit under 35 ILCS 5/704A(i) which goes into effect for the first reporting period of 2020 which begins on January 1, 2020 and ends on March 31, 2020. Taxpayers will be eligible to claim the credit beginning in April of 2020. This rulemaking implements the new minimum wage credit and is required to assist taxpayers in properly claiming the credit.
- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the new minimum wage credit found in Section 704A(i) of the Illinois Income Tax Act, 35 ILCS 5/704A(i), created by Public Act 101-0001. For reporting periods beginning on or after January 1, 2020, taxpayers may claim a withholding credit based on the increased wages attributable to the new minimum wage which took effect on January 1, 2020. The credit is reduced every year until it expires for reporting periods beginning on January 1, 2028.
- 11) Are there any proposed rulemakings to this Part pending? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
100.2197	Amendment	44 Ill. Reg. 97; January 3, 2020
100.2590	Amendment	44 Ill. Reg. 97; January 3, 2020
100.3100	Amendment	44 Ill. Reg. 97; January 3, 2020
100.3120	Amendment	44 Ill. Reg. 97; January 3, 2020
100.7010	Amendment	44 Ill. Reg. 97; January 3, 2020
100.2430	Amendment	44 Ill. Reg. 1785; January 24, 2020
- 12) Statement of Statewide Policy Objectives: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding this Emergency Rule shall be directed to:

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The full text of the Emergency Amendment begins on the next page:

SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

**Section 100.7390 Minimum Wage Tax Credit (IITA Section 704A(i))**  
**EMERGENCY**

a) Minimum Wage Credit. Each employer with 50 or fewer full-time equivalent employees during the current reporting period may claim a credit against the payments due under IITA Section 704A in an amount equal to the maximum credit allowable. The credit may be taken against payments due for reporting periods that begin on or after January 1, 2020 and end on or before December 31, 2027. In no event may the credit exceed the employer's liability for the reporting period. (IITA Section 704A(i)) No carryover of excess credit is allowed.

b) Definitions Applicable to this Section.

"Applicable percentage" means:

- 1) 25% for reporting periods beginning on or after January 1, 2020 and ending on or before December 31, 2020;
- 2) 21% for reporting periods beginning on or after January 1, 2021 and ending on or before December 31, 2021;
- 3) 17% for reporting periods beginning on or after January 1, 2022 and ending on or before December 31, 2022;
- 4) 13% for reporting periods beginning on or after January 1, 2023 and ending on or before December 31, 2023;
- 5) 9% for reporting periods beginning on or after January 1, 2024 and ending on or before December 31, 2024;
- 6) 5% for reporting periods beginning on or after January 1, 2025 and ending on or before:

A) December 31, 2026, for employers with more than 5 employees; and

B) December 31, 2027, for employers with no more than 5 employees. (IITA Section 704A(i))

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"Base compensation" for a reporting period means the total compensation paid in Illinois during the fourth quarter of the calendar year prior to the reporting period to employees who earned less than the current minimum wage during that fourth quarter.

Compensation or wages "paid in Illinois" has the meaning ascribed to that term under IITA Section 304(a)(2)(B). If an employee's compensation is not subject to tax in another state, the compensation is presumed, subject to rebuttal, to be paid in Illinois.

"Current compensation" for a reporting period means the sum of:

- 1) the total compensation paid in Illinois to eligible employees who earned no more than the current minimum wage during the reporting period, plus
- 2) for eligible employees who earned more than the current minimum wage at any time during the reporting period, the total hours worked in Illinois times the current minimum wage.

"Current employee" means an employee who was employed by the taxpayer during the current reporting period.

"Current minimum wage" means the minimum or reduced wage applicable to an employee by the Minimum Wage Law, 820 ILCS 105, for the current reporting period.

"Current reporting period" means the reporting period for which the taxpayer is calculating the minimum wage credit under this Section.

"Eligible employee" means any employee who earned no more than the current minimum wage for hours worked in Illinois for the employer during the reporting period and any employee who earned more than the current minimum wage for hours worked in Illinois for the employer at any time during the reporting period, but who earned less than the current minimum wage for hours worked in Illinois for the employer during the calendar year prior to the effective date of the current minimum wage. A recently hired employee is not an eligible employee. The total number of eligible employees for a current reporting period may not exceed the total number of employees who earned less than the current minimum wage for hours worked in Illinois for the employer at any time during the fourth quarter of the preceding calendar year.

"Employer" and "employee" have the meaning ascribed to those terms in the Minimum Wage Law [820 ILCS 105] except that "employee" also includes employees who work for an employer with fewer than 4 employees. (IITA Section 704A(i)) Members of a limited liability company who are treated as partners for federal and Illinois income tax purposes, but are employees within the meaning of the Minimum Wage Law, are employees for purposes of this credit.

"Full-time equivalent employees" means the ratio of the number of paid hours during the reporting period and the number of working hours in that period. (IITA Section 704A(i)) A full-time equivalent employee shall be assumed to work 40 hours per week for 13

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weeks for a total of 520 hours during a reporting period. The number of full-time equivalent employees for a reporting period means the number of employees working 40 hours per week that would be required to work the number of paid hours actually worked by all employees of the employer for that reporting period.

EXAMPLE: Taxpayer employs 56 employees who work 25,480 paid hours during a reporting period. 25,480 hours divided by 520 hours equals 49. Although employer employs 56 actual employees, only 49 full-time equivalent employees would be required to work the number of paid hours worked by all of the taxpayer's employees during the reporting period.

Hour "worked in Illinois" means an hour worked by an employee for which the compensation is paid in Illinois.

"Hourly employee" means an employee whose working hours are tracked and recorded by the employer during the reporting period, regardless of whether the employee is paid by the hour, by salary, by commission or any other measure.

"Maximum credit" for a current reporting period means the excess, if any, of the current compensation for the reporting period over the base compensation, multiplied by the applicable percentage, plus the credit for new eligible employees.

"New eligible employee" means an employee whose 90<sup>th</sup> consecutive day of employment for the employer occurred during the reporting period immediately preceding the current reporting period.

"Recently hired employee" means an employee who has been employed by the employer for less than 90 consecutive days as of the last day before the current reporting period.

"Reporting period" means the quarter for which a return is required to be filed under IITA Section 704A(b). (IITA Section 704A(i))

"Salaried employee" means an employee whose hours are not tracked and recorded by the employer during the reporting period. Salaried employees are deemed to have worked 40 hours per week for each week in which they were employed during a reporting period.

"Tipped employee" has the same meaning as found in 56 Ill. Adm. Code 210.110.

"Wages" means compensation, including bonus, overtime, and commission pay, of employees, but does not include fringe benefits.

Week "worked in Illinois" means a week worked by an employee for which the majority of hours worked by the employee were worked in Illinois.

- c) Eligibility for the Credit - Maximum Number of Full-Time Equivalent Employees. A credit may be claimed under this section only by an employer with 50 or fewer full-time

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equivalent employees during the current reporting period. (IITA Section 704A(i))  
Eligibility for the credit under this subsection shall be determined as follows:

- 1) Determine the number of hours worked by all salaried employees. Total the weeks worked by all salaried employees during the reporting period, rounded to the nearest whole week. Multiply the resulting number of weeks by 40 hours. Round the result to the nearest hour.
- 2) Total the hours worked by all hourly employees during the reporting period.
- 3) Determine the total hours worked by all employees by adding the number of hours worked by salaried employees to the number of hours worked by all hourly employees during the reporting period.
- 4) Determine the number of full-time equivalent employees by dividing the total hours worked by all employees during the reporting period by the 520 hours a full-time employee would work during the reporting period. Round the result up to the next higher whole number.

EXAMPLE: During a reporting period, the taxpayer employs 10 salaried employees who worked a total of 100 weeks during the reporting period and 30 hourly employees who worked a total of 15,000 hours. The salaried employees are deemed to have worked 4,000 hours during the reporting period. All employees worked a total of 19,000 hours during the reporting period. Therefore, during the reporting period, 37 full-time equivalent employees would have been required to work all of the paid hours worked by the taxpayer's employees.  $((100 \text{ weeks} \times 40 \text{ hours}) + 15,000 \text{ hours}) / 520 = 36.54$ , rounded up to 37 full-time equivalent employees

- 5) If the total number of full-time equivalent employees is greater than 50, the taxpayer is not eligible for the credit.
- d) Eligibility for the Credit - Increase in Compensation. An employer shall not be eligible for credits under this Section for a reporting period unless the average wage paid by the employer per employee for all employees making less than \$55,000 during the reporting period is greater than the average wage paid by the employer per employee for all employees making less than \$55,000 during the same reporting period of the prior calendar year. (IITA Section 704A(i)) Eligibility for the credit under this subsection shall be determined by computing the average wage paid to employees earning less than \$55,000 during the current reporting period and during the same reporting period for the preceding calendar year as follows.
- 1) Total the actual amount of wages paid in Illinois to each employee earning less than \$55,000 during the reporting period.
  - 2) Determine the number of hours worked by all employees earning less than \$55,000 during the reporting period by adding:

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- A) The total weeks worked by all salaried employees earning less than \$55,000 during the reporting period, rounded to the nearest whole week, multiplied by 40 hours and rounded to the nearest hour, plus
- B) The total hours worked by all hourly employees earning less than \$55,000 during the reporting period.
- 3) Determine the average wage paid in Illinois during the reporting period to employees earning less than \$55,000 by dividing the total wages paid to all employees earning less than \$55,000 during the reporting period in subsection (d)(1), by the total number of hours worked by all employees earning less than \$55,000 during the reporting period, as calculated according to subsection (d)(2).
- 4) If the average wage paid in Illinois to all employees earning less than \$55,000 during the current reporting period is less than or equal to the amount computed for the same reporting period during the preceding calendar year, the taxpayer does not qualify for the credit.

EXAMPLE: In the fourth reporting period of 2019, the taxpayer employed 10 salaried employees who worked a total of 100 weeks and 30 hourly employees who worked a total of 15,000 hours during the reporting period. All employees earned less than \$55,000 during the reporting period. The taxpayer paid a total of \$183,000 in wages to all 40 employees during the reporting period. The average wage paid in Illinois to all employees earning less than \$55,000 during the reporting period was \$9.63 per hour.  $\$183,000 / ((100 \text{ weeks} \times 40 \text{ hours}) + 15,000 \text{ hours}) = \$9.63/\text{hour}$

During the fourth reporting period of 2020 the taxpayer employed 8 salaried employees who worked a total of 100 weeks and 32 hourly employees who worked a total of 16,000 hours during the reporting period. All employees earned less than \$55,000 during the reporting period. The taxpayer paid a total of \$224,000 in wages to all 40 employees during the reporting period. The average wage paid in Illinois to all employees earning less than \$55,000 during the reporting period was \$11.20 per hour.  $\$224,000 / ((100 \text{ weeks} \times 40 \text{ hours}) + 16,000 \text{ hours}) = \$11.20 \text{ per hour.}$

\$11.20 is greater than \$9.63, therefore the taxpayer is eligible for the credit for the fourth reporting period of 2020.

e) Calculation of the Credit.

- 1) For each reporting period, the number of eligible employees may not exceed the number of employees who, during the last reporting period of the preceding calendar year, made less than the current minimum wage required by the Minimum Wage Law, 820 ILCS 105, for the current reporting period. (IITA Section 704A(i)) If the number of employees who would be eligible employees exceeds this limitation, the employer may choose which of the otherwise-eligible employees will be treated as eligible employees.

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2) Recently hired employees. An employer may not claim a credit for recently hired employees; however, such credits may accrue during the current reporting period and be claimed against payments under IITA Section 704A for future reporting periods after the employee has worked for the employer at least 90 consecutive days. (IITA Section 704A(i))

A) Any credits accrued during the initial 90-day employment period must be used to calculate the credit during the reporting period directly following the reporting period during which the employee reached their 90<sup>th</sup> day of employment. Determine if any of the current employees qualify as recently hired employees who began their employment less than 90 consecutive days immediately preceding the start of the current reporting period.

B) The wages paid to recently hired employees cannot be used to calculate the credit for the current reporting period. Taxpayer shall record the wages paid to such employees for possible use in a future reporting period. The wages paid during the employee's first 90 consecutive days of employment may only be used to calculate the minimum wage credit in the reporting period immediately following the reporting period in which the employee reaches their 90th consecutive day of employment. If an employee does not reach their 91st day of employment, any wages earned by the employee are ineligible to be used to calculate the credit in future reporting periods.

EXAMPLE: Employee is hired by the taxpayer on January 6, 2020 and continues to be employed through December 31, 2020. During that time, the employee earns the minimum wage required for each reporting period in 2020. The employee's 90th day of consecutive employment is April 5, 2020, which occurs during the second reporting period of 2020. Because the employee's 90th consecutive day of employment did not occur prior to the start of the second reporting period of 2020, the taxpayer must use the wages earned by the employee during their first 90 consecutive days of employment to calculate the credit for the third reporting period in 2020.

3) Number of Eligible Employees. Determine the number of eligible employees for a reporting period as follows:

A) Determine the number of employees who earned less than the current minimum or reduced wage at any time during the last reporting period of the preceding calendar year.

B) Determine the number of current employees who were paid no more than the current minimum wage during the reporting period plus the number of current employees who earned more than the current minimum wage at any time during the reporting period, but were employed by the taxpayer and earned less than the current minimum wage at any time during the fourth reporting period of the preceding calendar year.



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- C) The number of eligible employees for the reporting period is the lesser of the amounts in (A) and (B).
- f) Calculation of the Maximum Credit. The maximum credit for a current reporting period is comprised of two components: a credit for wages paid in the current reporting period to eligible employees, based on the increase in their wages attributable to an increase in the minimum wage, plus a credit for newly eligible employees equal to the credit that would have been earned for their increased wages in earlier reporting periods if they had been eligible employees during those reporting periods.
- 1) Computation of Credit for Eligible Employees. The credit for eligible employees is equal to the current compensation minus the base compensation, multiplied by the applicable percentage.
- A) Current compensation is the sum of the total compensation paid in Illinois to eligible employees who earned no more than the current minimum wage during the reporting period, plus, for eligible employees who earned more than the current minimum wage at any time during the reporting period, the total hours worked in Illinois times the current minimum wage.
- B) Base compensation is the total compensation paid in Illinois to employees earning less than the current minimum wage during the fourth quarter of the calendar year prior to the reporting period.
- C) Applicable rate is the percentage in subsection (b).
- EXAMPLE: In the fourth reporting period of 2019, taxpayer employed 10 tipped employees who earned the reduced wage of \$4.95 authorized by Section 4(c) of the Minimum Wage Law, 820 ILCS 105. All employees were hired more than 90 days prior to the beginning of the reporting period. The employees worked a total of 5,200 hours during that reporting period.
- In the first reporting period of 2020, the taxpayer employed the same 10 employees who earned the applicable subminimum wage of \$5.55 authorized by Section 4(c) of the Minimum Wage Law, 820 ILCS 105, and worked 5,200 hours.
- Taxpayer is entitled to a credit of \$780.  $((5,200 \text{ hours} \times \$5.55) - (5,200 \text{ hours} \times \$4.95)) \times .25 = \$780$
- 2) Computation of Credit for New Eligible Employees. The credit for new eligible employees is equal to the excess, if any, of the credit for eligible employees for prior reporting periods, recomputed by determining the current compensation for each reporting period for which a new eligible employee was a recent employee as if that new eligible employee had been an eligible employee for that reporting period.



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- A) If treating all the new eligible employees as eligible employees for a prior reporting period would cause the number of eligible employees to exceed the maximum number determined under subsection (e)(3) for that reporting period, the employer shall determine the current compensation for that reporting period by including only the maximum number. For this purpose, the employer may choose which employees will be treated as eligible employees without regard to which employees were treated as eligible employees in the original computation of the credit for the reporting period.
- B) The recomputed credit for a prior reporting period may not exceed the employer's liability for that reporting period.
- C) The base compensation is not recomputed for purposes of computing this component of the maximum credit.

EXAMPLE: In the fourth reporting period of 2019, taxpayer employed 10 tipped employees who earned the reduced wage of \$4.95 authorized by Section 4(c) of the Minimum Wage Law, 820 ILCS 105. All employees were hired more than 90 days prior to the beginning of the reporting period. The employees worked a total of 5,200 hours during that reporting period. 1 of the 10 employees resigned effective December 31, 2019.

In the first reporting period of 2020, the taxpayer employed the remaining 9 employees. Taxpayer hired 1 additional employee on January 6, 2020 who continued to work for the employer through December 31, 2020. For the first 2 reporting periods of 2020, all 10 employees earned the applicable subminimum wage of \$5.55 authorized by Section 4(c) of the Minimum Wage Law, 820 ILCS 105. During the 3<sup>rd</sup> reporting period of 2020, all 10 employees earned the applicable subminimum wage of \$6.00 authorized by Section 4(c) of the Minimum Wage Law, 820 ILCS 105. During the first 3 reporting periods of 2020, the original 9 employees worked 4,680 hours and the 1 recently hired employee worked 520 hours during each reporting period. The 1 recently hired employee reached the 90<sup>th</sup> day of employment on April 5, 2010, during the 2<sup>nd</sup> reporting period of 2020.

For the first reporting period of 2020, the taxpayer is entitled to a credit of \$58.50.  $((4,680 \text{ hours} \times \$5.55) - (5,200 \text{ hours} \times \$4.95)) \times .25 = \$58.50$ . The \$2,886 in wages paid to the recently hired employee during the 1<sup>st</sup> reporting period does not count toward the 1<sup>st</sup> reporting period credit.  $520 \text{ hours} \times \$5.55 = \$2,866$ .

During the 2<sup>nd</sup> reporting period of 2020, the recently hired employee worked 30 hours between April 1, 2020 and April 5, 2020. Between April 6, 2020 and April 30, 2020, the recently hired employee worked 490 hours. The \$166.50 in wages paid to the recently hired employee between April 1, 2020 and April 5, 2020, does not count towards the 2<sup>nd</sup> reporting

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period credit. 30 hours x \$5.55 = \$166.50. The remaining \$2,719.50 in wages paid to the recently hired employee does count toward the 2<sup>nd</sup> reporting period credit. 490 hours x \$5.55 = \$2,719.50. Therefore, for the 2<sup>nd</sup> reporting period of 2020, the taxpayer is entitled to a credit of \$738.36.  $((5,170 \text{ hours} \times \$5.55) - (5,200 \text{ hours} \times \$49.5)) \times .25 = \$738.36$

The \$3,032.50 in wages paid to the recently hired employee during the first 90 days may be applied to the 3<sup>rd</sup> reporting period credit calculation. 550 hours x \$5.55 = \$3,032.50. Therefore, for the 3<sup>rd</sup> reporting period of 2020, the taxpayer is entitled to a credit of \$2,123.13.  $((5,200 \text{ hours} \times \$6.00) + (550 \text{ hours} \times \$5.55)) - (5,200 \text{ hours} \times \$4.95)) \times .25 = \$2,123.13.$

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- g) Each employer who deducts and withholds or is required to deduct and withhold tax under the IITA and who retains income tax withholdings as a result of the credit allowed under IITA Section 704A(i) and this Section must make a return with respect to those taxes and retained amounts in the form and manner that the Department, by rule, requires and pay to the Department or to a depositary designated by the Department those withheld taxes not retained by the employer. (IITA Section 704A(i)) The amount of taxes withheld, and the credit claimed under this section for a current withholding period shall be reported on the taxpayer's Form IL-941, Illinois Withholding Income Tax Return, for the current reporting period.